

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273 CS

Outdoor Advertising

SPONSOR(S): Mayfield

TIED BILLS:

IDEN./SIM. BILLS: SB 566(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	11 Y, 2 N	Pugh	Miller
2) Local Government Council	8 Y, 0 N, w/CS	Smith	Hamby
3) State Infrastructure Council	9 Y, 0 N, w/CS	Pugh	Havlicak
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Chapter 479, F.S., regulates billboards and other forms of outdoor advertising signs. Advertising companies and other owners of outdoor signs must be licensed by the Florida Department of Transportation (FDOT) and obtain permits that regulate height, size and other characteristics of the billboards. County and municipal governments are not precluded from enacting local ordinances regulating outdoor advertising, but these regulations must be in harmony with state and federal requirements.

HB 273 w/CS makes significant changes to two sections of law in chapter 479, F.S. The bill:

- Establishes "view zones" along the public rights of way of interstates, expressways, federal-aid primary highways and the State Highway System in the state, excluding privately and other publicly owned property.
- Allows FDOT and sign owners to enter into agreements identifying the specific location of a billboard's view zone, meaning an unobstructed view by passing motorists.
- Specifies in statute the standard dimensions of a view zone.
- Prohibits trees and other vegetation that are part of a beautification project from being planted in a billboard's view zone.
- Requires any governmental entity violating the view zone provisions to pay the sign owner compensation equal to the lesser of either lost revenue because the sign was blocked or the sign's fair market value.
- Generally allows the owner of a lawfully erected billboard that conforms to state and federal requirements for land-use, size, height, and spacing to elevate the billboard at its permitted location if a sound wall blocks or screens the signage. But it also lists the options of local governments whose ordinances or land-use regulations would conflict with a billboard's elevation.
- Specifies that a billboard reconstructed so it can be raised above a sound wall must comply with the Florida Building Code standards and wind load requirements.
- Directs FDOT to conduct a survey and a public hearing of property owners where a sound wall is proposed as part of a transportation project, and requires FDOT to alert property owners to their local-government's options in handling legally erected billboards that may be impacted by erection of a sound wall.
- Specifies that the provisions of this act do not apply to any written agreement existing prior to July 1, 2006, between any local government and the owner of an outdoor advertising sign.

HB 273 w/CS raises no apparent constitutional issues. The bill has no immediate financial impact on the state or on local governments, and will not fiscally impact these governmental entities unless they refuse to allow the specified view zones and increases in sign height, and are required to pay penalties or compensation to the sign owners.

HB 273 w/CS takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/14/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide Limited Government/Safeguard Individual Liberty** – HB 273 w/CS prohibits trees and other vegetation that are part of a “beautification project” from being planted in a legally erected and permitted billboard’s view zone. The bill requires any governmental entity violating the view zone provisions to compensate the sign owner the lesser of lost revenue because the sign was blocked or the sign’s fair market value, and provides exemptions from such payment requirements. Additionally, the bill allows the owner of a lawfully erected billboard conforming to state and federal requirements for land use, size, height, and spacing, to increase the billboard’s height at its permitted location if a noise wall blocks or screens the signage. The bill also provides a public process by which FDOT, local governments, and property owners near road construction projects that may necessitate a sound wall, thereby blocking a billboard’s view zone, can communicate information and options on how to address the sign owner’s issues.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Florida has an estimated 20,900 permitted outdoor advertising signs on 13,700 billboard structures. About 5,900 are considered by FDOT as lawful, non-conforming signs, meaning they were in compliance with federal, state, and, if applicable, local regulations when they were erected, but are not in compliance with current regulations.

Chapter 479, F.S., governs billboards and other forms of outdoor advertising. Advertising companies and other owners of outdoor signs must be licensed by FDOT and obtain permits, regulating height, size and other characteristics of the billboards. The majority of the provisions specify FDOT’s duties and authority as they relate to permitting, removing, and otherwise regulating billboards along the interstate highway system and the federal–aid primary highway system, which includes state roads. The chapter also addresses ways to accommodate billboard owners whose signs’ “view zones” are affected by highway beautification projects, such as planting of vegetation, and highway widening or other improvements.

Because federal dollars are used to build and maintain these federal and state roads in Florida, FDOT must adhere to federal laws and regulations concerning billboards. The Highway Beautification Act of 1965 (chapter 23 U.S. Code section 131), chapter 23 Code of Federal Regulations section 750, and Federal Highway Administration (FHWA) Policy Guidance relate to the regulation of billboards. Under federal law, regulation, and policy guidance:

- To be able to remain, nonconforming signs must remain substantially the same as they were on the effective date of the state law or regulations that made them nonconforming.
- Reasonable repair and maintenance of the sign, including a change of advertising message, is allowable.
- Nonconforming signs may continue as long as they are not destroyed, abandoned, or discontinued. States may pass laws for exceptions to be made for nonconforming signs destroyed due to vandalism and other criminal or tortious acts.
- Each state must develop its own criteria to determine when customary maintenance ceases and a substantial change has occurred which would terminate nonconforming rights. When nonconforming rights are terminated under state law, the sign must be removed as an illegal sign without compensation.
- However, lawfully erected signs, even if they are now nonconforming, cannot be removed by a state without payment of just compensation.

Under state law, local governments also may not remove, or order to be removed, lawfully erected signs along the interstate or federal-aid highways without paying the signs' owners just compensation.

A March 2005 memorandum from the FHWA addressed a relatively new issue relating to nonconforming signs – conflicts between sign owners and state transportation agencies over noise-attenuation barriers (or “sound walls”) along highways that are blocking billboards. The memorandum concluded that allowing owners of non-conforming billboards to increase the signs' height in such circumstances is inconsistent with federal law and regulations.<sup>1</sup>

Current state law clarifies that nothing in chapter 479, F.S., prevents FDOT or other governmental entities from entering into an agreement with a sign owner increasing the height of a lawfully erected sign at its permitted location if a noise-attenuation barrier, visibility screen, or other highway improvement is erected in such a way as to screen or block the sign's visibility. Under such agreements, the affected sign's height can be increased only as much as is necessary to achieve the same degree of visibility from the road as it had previously. If the affected sign is non-conforming and it is located along a federal aid primary highway system (which includes most of Florida's major highways), the FHWA must approve the agreement – a provision in conflict with the aforementioned FHWA memorandum.

#### Effect of Proposed Changes

HB 273 w/CS amends two sections of chapter 479, F.S., related to visibility and height of lawfully permitted billboards.

Specifically, the bill amends s. 479.106, F.S., to:

- Establish “view zones,” which are unobstructed views of billboards by passing motorists, along the public rights-of-way of interstates, expressways, federal-aid primary highways and the State Highway System, excluding privately and other publicly owned property.
- Specify in statute the standard dimensions of a view zone. Along public rights-of-way where the posted speed limit is no more than 35 miles per hour, the view zone is 350 feet. But the view zone is 500 feet where the posted speed limit is greater than 35 miles per hour. These view zones must be within the first 1,000 feet as measured along the pavement's edge in the direction of oncoming traffic, from a point on the edge of the pavement perpendicular to the billboard sign's edge that is facing the highway.
- Allow FDOT and sign owners to enter into agreements identifying the specific location of a billboard's view zone.
- Prohibit trees and other vegetation that are part of a beautification project from being planted in a billboard's view zone.
- Direct a sign owner, who is alleging that a governmental entity or other party has violated the view-zone requirements, to provide 90 days' written notice to the alleged offender. If the alleged violation is not cured within 90 days, the sign owner may file a claim in circuit court where the sign is located.
- Eliminate the need for additional FDOT permits if 48-hour notice is given to FDOT for corrective action of any modifications or removal of material within a beautification project or other planting by the governmental entity or other party.
- Provide protection from penalties to landscape architects and other persons licensed under Part II, ch. 481, F.S.
- Specify that this act does not apply to the provisions of any written agreement existing prior to July 1, 2006, between any local government and the owner of an outdoor advertising sign.

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<sup>1</sup> U.S. DOT /FHWA memorandum from Susan Lauffer, director of Office of Real Estate Services to Division Administrators and Directors of Field Services, dated March 8, 2005.

The bill amends s. 479.25, F.S., to:

- Allow the owner of a lawfully erected billboard that conforms to state and federal requirements for land use, size, height, and spacing to elevate the billboard at its permitted location if a sound wall blocks or screens the signage.
  - Delete references to the Federal Highway Administration's approval before raising the height of a non-conforming billboard along a federal-aid primary highway. This reflects the 2005 policy memorandum issued by FHWA on the issue.
  - Specify that a billboard reconstructed so it can be raised above a sound wall must comply with the Florida Building Code standards and wind load requirements.
  - Direct FDOT to conduct a survey and a public hearing of property owners where a sound wall is proposed as part of a transportation project, and requires FDOT to alert property owners to their local-government's options in handling billboards that may be impacted by the sound barrier. Specifically, if a majority of the impacted property owners respond on the FDOT survey that they want the sound wall erected, they will be notified that their local government will be required to either:
    - Allow elevation of the billboard in violation of local ordinances or land development regulations;
    - Allow the billboard to be relocated or reconstructed at another site if the sign owner agrees; or
    - Pay the fair market value of the sign and its associated interest in the real property on which it is located.
- Identical information will be presented at the required public hearing.
- When a majority of the impacted residents continue to voice their approval for the noise wall, FDOT will notify the affected local government of the decision. At that time, and notwithstanding the provisions of a conflicting ordinance or regulation, the local government will exercise its options to either:
    - Issue a permit by variance or other method for the billboard's reconstruction at the same site;
    - Allow the billboard's relocation, or construction of another billboard, at an alternative site that is permissible under the terms of chapter 479, F.S., if the sign owner agrees; or
    - Refuse to issue the required permits for reconstruction and pay the fair market value of the sign and the associated interest in real property.
  - Specify that this act does not apply to the provisions of any written agreement existing prior to July 1, 2006, between any local government and the owner of an outdoor advertising sign.

The bill reiterates in a stand-alone section that this act does not apply to any existing settlement agreement between any local government and the owner of an outdoor advertising sign.

HB 273 w/CS takes effect upon becoming law.

#### C. SECTION DIRECTORY:

**Section 1:** Amends s. 479.106, F.S. to specify view-zone dimensions and method for determining the view zone. Specifies penalties. Provides exemptions.

**Section 2:** Amends s. 479.25, F.S., to clarify under what circumstances lawfully erected, conforming billboards may be raised. Deletes obsolete language. Provides for FDOT surveys of and public hearings for certain property owners about whether they want a sound wall erected and what impacts that could have on their local governments. Specifies local government options if majority of impacted residents want a sound wall erected that will require the elevation of an existing billboard. Provides exemptions.

**Section 3:** Provides this act does not apply to any existing settlement agreement between any local government and the owner of an outdoor advertising sign.

**Section 4:** Specifies this act shall take effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

No direct or immediate impact. But see "D. FISCAL COMMENTS" below.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

No immediate impact. But see "D. FISCAL COMMENTS" below.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

No direct or immediate impact. But see "D. FISCAL COMMENTS" below.

### D. FISCAL COMMENTS:

In the event FDOT or a local governmental entity violates the proposed view zone provisions in s. 479.106, F.S., it would have to pay the sign owner a penalty equal to the lesser of the lost revenue from the screened or blocked billboard or the fair market value of the sign.

Additionally, the bill amends s.479.25, F.S., to specify circumstances under which a local government may have to pay fair market value to a sign owner for removal of a billboard and for the real-property interest in the land on which the billboard was located.

These potential costs are indeterminate, and likely will vary among communities based on the billboard's age, condition, location, and revenues.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable, because HB 273 w/CS does not to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

FDOT has sufficient rulemaking authority to implement the provisions of HB 273 w/CS, and cities and counties are exempt from the provisions of chapter 120, F.S., Florida Administrative Code.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

### **Drafting Issues**

Transportation Committee staff recommends deleting Section 3 of the bill, which creates an exemption from the provisions of this bill for existing settlement agreements between a local government and a sign owner that was executed prior to the bill's effective date. This language is no longer necessary because similar exemption language has been added to the specific statutes amended.

### **Other Comments**

Resolution 2005-1521-A, regarding Outdoor Advertising and Highway Beautification, was passed unanimously by the Jacksonville City Council on December 13, 2005 and signed by Mayor Peyton on December 19, 2005. This resolution opposes HB 273 and SB 566.<sup>2</sup>

Resolution No. 2006-12, regarding Outdoor Advertising and Highway Beautification, was passed and adopted by the City of Clearwater on January 19, 2006 and signed by Mayor Hibbard. This resolution opposes HB 273 and SB 566.<sup>3</sup>

Mr. Ken Towcimak, Director, Florida Department of Transportation, submitted the following statement regarding the "option 4:"

"[Lines 115-133 of the bill] allows local governments four (4) options if the Department intends to construct a sound attenuation wall on its rights of way, and if the wall will screen an outdoor advertising sign from view, and if the local government has an ordinance in place which precludes a screened outdoor advertising sign from being increased in height so as to be seen above the wall.

The Department must object to the fourth option [lines 124-133 of the bill] which provides that if the local government will not issue a variance from the sign height ordinance, then the local government may prohibit the Department's installation of the noise attenuation wall.

Noise walls constructed on the National Highway System, which includes Interstate Highways, must comply with regulations promulgated by the Federal Highway Administration. Such regulations specify that the wall must be installed if approved by the property owners directly impacted by the highway noise (receptors). If such impacted individuals approve the installation of the wall, and if the wall meets other technical and cost criteria, then the Department must construct the wall. The local government may not "veto" such installation on DOT rights of way.

Also, please note that the Department has previously purchased all rights of "view" to the Interstate Highway System from adjacent land, giving the Department the right to construct any necessary improvements on its rights of way."<sup>4</sup>

FDOT has drafted an amendment to address its concerns, and is continuing its discussions with the bill sponsor and the bill's supporters.

## **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

### **Local Government Council**

The Council on Local Government adopted four amendments on February 22, 2006. Briefly:

- Amendment #1 clarifies that the changes to s. 479.106, F.S., do not apply to private property owners; provides for a shorter view zone for posted speed limits of 35 mph or less; clarifies that the bill pertains

<sup>2</sup> See Resolution from Tracey Arpen, Office of General Counsel, City of Jacksonville, Florida (December 29, 2005) (on file with House of Representatives, Local Government Council).

<sup>3</sup> See Resolution from Bill Jonson, Vice-Mayor, City of Clearwater, Florida (January 19, 2006) (on file with House of Representatives, Local Government Council).

<sup>4</sup> See e-mail from Ken Towciamk, Director, Florida Department of Transportation, (February 22, 2006) (on file with House of Representatives, Local Government Council).

to the public rights of way of interstates, expressways, federal-aid primary highways and the State Highway System instead of a 'view zone of the State Highway System and expressways.'

- Amendment #2 provides a 90-day written notice by the sign owner of a violation regarding the view zone and provides no penalty will be assessed if the violation is cured within the 90 day period; removes the need for additional DOT permits (if 48-hours notice is given) for corrective action of any modifications or removal of material within a beautification project or other planting by the governmental entity or other party; and provides protection from penalties to persons licensed under ch. 481, F.S.
- Amendment #3 provides local governments and local jurisdictions with four options for resolution when a sign height increase conflicts with local ordinances or land development regulations being: 1.) to issue a permit by variance; 2.) allow relocation of the sign; 3.) refuse to issue the permit and pay fair market value of the sign and its associated interest in the real property to the sign owner; and 4.) prohibit the installation of the noise barrier to the extent that it blocks the sign.
- Amendment #4 clarifies that this act will not negate any existing settlement agreements between local governments and owners of outdoor advertising signs.

The bill, as amended, was reported favorably with council substitute.

### **State Infrastructure Council**

At its March 14, 2006, meeting, the State Infrastructure Council adopted without objection five amendments. Briefly:

- Amendment #1 exempts "other publicly owned property" from the view zone provisions of the bill. The intent is to limit the bill's requirements to publicly owned transportation rights-of-way.
- Amendment #2 specifies that the new view zone requirements in s. 479.106, F.S., shall not apply to existing written agreements executed before July 1, 2006, between any local government and a sign owner.
- Amendment #3 amends s. 479.25, F.S., to remove provisions adopted in the previous committee related to a local government's options in addressing an FDOT decision to erect sound walls that would block or require elevation of a billboard in violation of a local ordinance or land-development regulation. Instead, FDOT must conduct a survey and a public hearing of property owners where a sound barrier is proposed as part of a transportation project. It requires FDOT to alert property owners to their local-government's options for handling billboards that may be impacted by erection of a sound wall, and if a majority of property owners still prefer the erection of a sound wall, FDOT must notify the affected local government of the decision. The local government then has to choose among its options, which are to allow the affected billboard to be elevation or otherwise reconstructed in violation of an ordinance or land-development regulation; allow the billboard to be relocated to a permissible site if the sign owner agrees; or refuse to issue the required permits for reconstruction and pay the fair market value of the sign and the associated interest in real property on which the sign was located. This amendment specifies that s. 479.25, F.S., shall not apply to existing written agreements executed before July 1, 2006, between any local government and a sign owner.
- Amendment #4 clarifies the legal steps that a sign owner who believes that a governmental agency has violated the view zone requirements must take to initiate circuit court review of the allegations.
- Amendment #5 replaced "penalty" with "claim of compensation," which is a legally more accurate phrase.

The Council then voted 9-0 in favor of the bill as amended and reported it as a council substitute.